

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application Of:	)	Confirmation No. 8653
	)	
George Michael MOCKRY et al.	)	Group Art Unit: 3711
	)	
Serial No.: 09/878,860	)	Examiner: M. Chambers
	)	
	)	Customer No. 22907
	)	
Filed: May 10, 2002	)	Attorney Docket No.: 006385.00001

**For: METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING  
EACH BATTER'S LAST PITCH**

**SUBSTITUTE BRIEF ON APPEAL**

U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Appeal Brief - Patents  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

In response to the recent ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER issued by the Deputy Chief Appeal Administrator on 19 November 2007, Appellants submit this Substitute Appeal Brief. Please charge any fee associated with this filing to our Deposit Account No. 19-0733.

### **REAL PARTIES IN INTEREST**

The real parties in interest in this application are the inventors,

George Michael Mockry  
13567 Road 28,  
Dolores, Colorado 81323

Greg Mockry  
185 Cook Street  
Massena, New York 13662

The application is not assigned.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences. See also Appendix 3.

### **STATUS OF CLAIMS**

Claims 1-22 were previously canceled. Claims 23-40 are pending and all stand finally rejected. Appellants appeal the rejection of all of the claims, claims 23-40. Appendix 1 presents a copy of the claims involved in this appeal.

### **STATUS OF AMENDMENTS AFTER FINAL REJECTION**

No amendments have been filed subsequent to final rejection.

Again, Appendix I lists the claims as they were pending at the time of the final rejection.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

The claims are directed specifically to a method in which a baseball game (*e.g.*, an analog or digital recording thereof – see paragraph [0006], page 2, lines 20-25)<sup>1</sup> is edited using a completely objective and reproducible procedure, to remove “substantially” all aspects of the pre-recorded game that do not directly impact the outcome of the game, *i.e.*, save for the outcome-determinative action associated with each batter that comes to the plate and a minor amount of additional content (such as between inning banter by the announcers, occasional crowd shots, or certain foul balls that may have fan interest) (paragraph [0006], page 2, line 20 to page 3, line 16). In this way, essentially all the action of an entire baseball game that is reflected in the box score for each participant in the game is consolidated or condensed into about 10-15 minutes of video (paragraph [0005], page 2, lines 13-14).

An essential aspect of the subject matter claimed is a method of editing a recorded baseball game to provide a shortened game for viewing, the method comprising as one essential step the editing of a video recording of the entire game so that the edited video consists essentially of only the last pitch to each batter for each "at bat."

Independent claim 23 focuses on a “method of replying or rebroadcasting a baseball game” to subscribers. Using a video record made of each players at bat, the video is edited so that edited video “consists essentially of” the last pitch thrown to each player, plus any resulting action from that pitch, successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and unsuccessful attempts of the

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<sup>1</sup> Paragraph, page, and line number references are to the substitute specification filed in

runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch (paragraph [0005], page 2, lines 9-13 and paragraph [0005], Page 3, lines 3-6). The resulting video record would be about 10 to 15 minutes, showing all the action of the game (paragraph [0005], page 2, lines 13-14 and paragraph [0006], page 3, lines 7-10). Claim 23 also requires that subscribers be obtained for viewing the edited recording (paragraph [0007], page 3, lines 17-21).

Claim 24 is another independent claims directed to a method of providing a subscription service using recordings prepared in accordance with the basic method. Thus, the method comprises producing a game recording of each appearance at bat and resulting game action (paragraph [0006], page 2, lines 20-25). The game recording is edited by deleting substantially all game action other than the last pitch thrown to each player, plus any resulting action from that pitch, successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch (paragraph [0006], page 2, line 25 to page 3, line 6). As with claim 23, claims 24 also requires that subscribers be obtained for viewing the edited recording and that the edited recording be played for viewing by the subscribes (paragraph [0007], page 3, lines 17-21)

Another independent claim is claim 35. Claim 35 is directed to a obtaining revenue from the re-broadcast of an edited recording prepared in accordance with the basic method. Thus, the method comprises recording each appearance-at-bat and resulting game action to produce a game

recording (paragraph [0006], page 2, lines 20-25). The game recording is edited so that the edited video “consists essentially of” the last pitch thrown to each player, plus any resulting action from that pitch, successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch (paragraph [0006], page 2, line 25 to page 3, line 6). Claim 35 then requires that the edited recording be offered to potential subscribers for viewing the edited recording and that the edited recording be played for viewing by the subscribers for money (paragraph [0007], page 3, lines 17-21).

Independent claim 38 is patterned after claim 35 but focuses on obtaining revenue from an edited baseball game. As with the claim 35, claim 38 comprises recording each appearance-at-bat and resulting game action to produce a game recording (paragraph [0006], page 2, lines 20-25). The game recording is edited so that the edited video “consists essentially of” the last pitch thrown to each player, plus any resulting action from that pitch, successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch (paragraph [0006], page 2, line 25 to page 3, line 6). Claim 38 then requires that the edited recording be offered to potential subscribers for viewing the edited recording and that the edited recording be played for viewing by the subscribers for money (paragraph [0007], page 3, lines 17-21).

Thus, a key feature of each of these independent claims is the concept that the re-broadcasted game consists essentially of three aspects of the original game action (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch.

Each of the independent claims also has its own set of operative steps. Claim 23 requires that (1) pre-recorded video of the entire game be edited to consist essentially of the game action noted above, (2) subscribers for viewing the edited video be obtained and (3) that the edited video be broadcasted to the subscribers. In claim 24, the step of recording the original game action is positively required. Claims 35 and 38 are focused more directly on business methods which parallel claims 23 and 24 respectively, but require that the edited video be broadcasted to subscribers in exchange for monetary consideration.

#### **GROUND OF REJECTION TO BE REVIEWED**

- (1) Whether claims 23-25, 28-30, 33-35, 37, 38 and 40 are anticipated by (35 U.S.C. 102(b) or in the alternative are obvious in view of (35 U.S.C. § 103) "Pro Quest Producing Sports Channel."
- (2) Whether claims 27, 32, 36 and 39 are obvious in view of (35 U.S.C. 103) "Pro Quest Producing Sports Channel" and further in view of "MediaChannel."

## **ARGUMENT**

### **PROQUEST DOES NOT ANTICIPATE THE CLAIMED INVENTION**

Claims 23-25, 28-30, 33-35, 37, 38 and 40 are finally rejected as anticipated (35 U.S.C. 102(b)) by the "ProQuest Producing Sports Channel" reference (hereafter "ProQuest"), which is a republication of an article from the San Francisco Chronicle Newspaper. "ProQuest" neither suggests nor describes the novel method claimed by applicants of editing a recording of a baseball game by retaining substantially only the last pitch to each batter.

The Examiner contends that "ProQuest discloses an edited baseball game provided to subscribers." But nothing in ProQuest demonstrates that it is anything more than a baseball highlight show – calling it an edited baseball game does not change that immutable fact. Indeed, the citation expressly characterizes the program as a "highlight" show. Applicants' claimed invention is NOT the production of a highlight show as that term is commonly understood!!

In the Final Office Action, the Examiner presents a definition of "highlight" and argues that both ProQuest and the invention show highlights. Applicants do not agree with that characterization and submit that such a characterization is factually incorrect.

The claimed method is an objective procedure for producing a specific edited version of a baseball game in which every batter's appearance at the plate is shown, where that appearance is edited such that the resulting video "consists essentially of" the last pitch to each batter and resulting action (or alternatively in claim 24 edits the recording of a game to delete substantially all game action other than the last pitch to each batter and resulting action) and that edited video

is re-broadcast. That process does not produce a “highlight” program. There is no subjective component to selecting the essential aspects of the original video to include in the edited video of the claimed invention (or selecting aspects to NOT included).

While ProQuest may be starting with the same raw footage of a baseball game that then is edited to produce its highlight package, the “subjective” editing that is done to produce a highlight package and the editing that is expressly required by the claimed invention are not the same thing. Thus, ProQuest cannot be anticipatory. The Examiner’s contention that “to have selected an appropriate number of action shots” ... “in order to permit the edited video to be broadcast in an allotted time,” simply does not embrace applicants’ claimed invention and thus is an inappropriate basis for rejecting the claims.

The foundation of the Examiner’s position seems to be the assertion that how the entire footage of the baseball game is edited is simply a matter of choice.

However, that position overlooks the essence of the invention as defined by the claims. Indeed, it completely ignores the claimed subject matter.

A highlight show edits a baseball game according to the **subjective** whims of the individual doing the editing, to a consolidation of those aspects or action footage of the original video that the individual **subjectively** decides is worth showing in the “highlight” program. The present invention, in a completely different manner, requires a totally **objective** treatment of the baseball game. The essential product of the method does not change depending on who is assigned the task of editing the video. The resulting video program consists essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii)



successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch. From game to game, the original game footage is edited in exactly the same manner. The editing is not varied based on the bias or interests of person doing the editing and is not influenced by the nature of the game itself (its length, the number of hits made or runs scored). The claimed method is not simply a matter of choice that varies from one time to another. Nothing in the prior art's production of a "highlight" show provides any suggestion of the radically different approach embraced by the claimed method.

ProQuest does NOT anticipate the claimed invention.

**PROQUEST (WITH OR WITHOUT MEDIACHANNEL) DOES NOT MAKE THE CLAIMED INVENTION PRIMA FACIE OBVIOUS**

All claims stand rejected under 35 U.S.C. 103 as obvious over ProQuest (most alone), some combined with "MediaChannel" (for certain dependent claims).

Since the independent claims are not obvious in view of ProQuest and since the cited Media Channel reference does not remedy any of ProQuest's deficiencies, the claims are also patentable over the combined teachings of these references.

At the root of this appeal is the Examiner's improper assumption (See In re Kahn, 441 F.3d 977, 78 U.S.P.Q.2<sup>nd</sup> 1329 (Fed.Cir. 2006)) that the present invention as claimed is nothing more than an edited baseball game. To the contrary, the present invention provides a specific and consistent method or algorithm which can be applied to the editing of a baseball game to

achieve the benefit of allowing essentially all the action of a game to be viewed in a much shorter period of time to address the issue that a full baseball game typically takes a long period of time to complete.

The essence of that method, as described and claimed, is in its simplest terms, to show the last pitch to each batter. In other words, every batter is shown for every at “bat”, but for minor exceptions, only one pitch to each batter is retained in the edited game, namely the last pitch to each such batter. While the concept is ultimately relatively simple, there is no suggestion in any of the prior art of record of the use of such a method.

*"It does not matter, however, what motivated an inventor to discover the claimed subject matter. The discovery may be by design, by accident, by a vision in a dream, by a sudden flash of genius, or by any other conceivable means.*

*"Patentability shall not be negated by the manner in which the invention was made." 35 U.S.C. § 103 (1988). The relevant consideration is the problem the patent applicant purports to have solved, regardless of the technique employed to achieve that solution. " Oscar Mayer Foods Corp. v. ConAgra, Inc., 45 FJd 443 (Fed. Cir. 1994).*

The examiner accurately states (page 2 of that Final Office Action) the “ProQuest discloses an edited recording.” However, that is all that is disclosed in the ProQuest reference. There is no suggestion that ProQuest describes any specific method or specific way of editing a baseball game or that ProQuest suggests any means by which essentially all of the outcome-

determinative action of a game is condensed into a time frame such as that described for the present invention.

The Examiner has also contended that the specification “provides no unexpected results” in recording the action plays of the game (See top of page 3 of Final Office Action). This comment illustrates the Examiner’s erroneous attempt to shift the burden of demonstrating patentability to applicants. It is the burden of the Patent and Trademark Office (PTO) to present a *prima facie* case of obviousness of the invention defined by applicants’ claims, it is not applicants’ burden to show the “criticality” or “unexpected results” of the invention, unless and until the PTO *prima facie* shows that the invention (method) would have been obvious to a person of ordinary skill in the art. As demonstrated, the rejection does NOT present a *prima facie* case of obviousness.

As noted above, the essence of the Final Office Action is the contention that deciding what portion of a pre-recorded video of a baseball game to select (or edit) is simply a design choice (“editing decisions”). But, the exercise of a design choice is at the heart of any invention that involves a new way of using established technology. When that choice is a non-obvious choice, as is the case with the present invention, then the requirement for patentability is satisfied. The Examiner’s approach to assessing patentability ignores the proper method for determining the issue of non-obviousness established by the U.S. Supreme Court in *Graham v. Deere*.

In the present case, the claimed method involves an objective, pre-selection of the essential content of the edited recording (*i.e.*, the content to include and just as important the

content not to include) that breathes patentability into the invention – the attempt in the Office Action to denigrate that novel and nonobvious selection of content as simply a matter of design choice is based completely on an improper hindsight evaluation of the claimed invention.

The proper question, when addressing the issue of patentability, is whether it would have been obvious to a skilled worker to use the known technology in the manner embraced by the pending method claims. The fact that the invention is one of an infinite numbers of “choices” that confronts a worker of ordinary skill, when using such established technology to edit a video/audio recording, is of no moment. Indeed, it is that fact that there is an almost limitless way the content could be edited, yet the claimed invention defines a specific way that must be maintained from game to game that sets it apart from the prior art. It is only when illuminated by the improper light of hindsight that the present invention would in any way be considered by a skilled worker.

The examiner argues (top of page 3 of Final Office Action) that “it would have been obvious to one of ordinary skill in the art at the time of the invention to have edited the video to reflect what the editor wished to record based on personal preferences and time available.” The examiner provides no support whatsoever to establish that such “personal preferences” would be known to include “only the last pitch to each batter” or that such an editing process could achieve the results of the applicant’s invention. Indeed, applicants submit that it is the difference between “personal preferences” and an established algorithm for editing the game (as required by the claims), that sets the invention apart from the prior art. Thus, the examiner has not met his burden “[t]o reject claims in an application under section 103, an examiner must show an

unrebutted prima facie case of obviousness...” In re Kahn, supra.

Again, the invention is NOT directed simply to making a “highlight” tape of a baseball game, as for example one might see on ESPN’s SportCenter and as the ProQuest production clearly involved. Rather, the invention is directed to a particular pre-selected and thus objective method of editing a pre-recorded baseball game to show all of and essentially only all of the outcome-determinative pitches to each batter; while substantially eliminating all non-outcome-determinative action from the edited recording. In this way the edited video shows substantially only the outcome of each at bat in the game (all of the “pay-off pitches”), such as the strike-out pitch, the base hit, the home run, the hit batter, the ground out, the fly out, the double play ball, etc. of each and every batter. Obviously, such a record is not merely a highlight reel – indeed much of the action required to be included by applicants’ claimed invention likely would not even be considered a highlight.

The concept of making a highlight tape does not suggest making such a pre-selected, edited record of an entire baseball game in the manner defined by the pending claims.

Thus, when one assesses the differences between the cited prior art and the subject matter defined by the pending claims, as required by *Graham v. Deere*, one sees that the actual content of the potential recordings is substantially different. A set of highlights, as practiced by the prior art (ProQuest included), captures only those events in the course of a game that represent a subjective assessment by the editor of those aspects of the game that a viewer might find particularly interesting. The present invention, in contrast, establishes an objective, pre-selection of the game action to be included, selecting essentially all of the game action that contributes to

the box score of the game. In a nine inning baseball game this would require at a minimum 54 pitches, with a typical number being about 70-85 (and the resulting game action).

There is nothing in the cited ProQuest reference that in any way suggests that one could predicate a new business method, *i.e.*, produce a new product, that would be in demand, *i.e.*, have intrinsic value, **independent of common highlight videos** by capturing the action of a baseball game in this manner, *i.e.*, by distilling the recording of a baseball game down to essentially only those actions that contribute directly to the outcome of the contest, such as the result that occurs following the last pitch thrown to each batter for each turn at the plate, or the tagging out or safe advancement of a base runner as may occur in a pick-off play or if the runner is (or is not) caught stealing.

Based on applicants' teachings, anyone with even a rudimentary knowledge of the game of baseball can envision what aspects of the pre-recorded game to exclude and what to retain in the editing process to accomplish the stated result – there is nothing subjective in carrying out the claimed method.

However, before the disclosure of applicants' teachings, there is not one shred of evidence that those of ordinary skill would have envisioned conducting such a method and preparing such a product. The prior art always focused on the subjective selection of game action in the nature of a highlight show. That is not applicants' invention.

Of course, one can, within the spirit of this invention, include a minor amount of extraneous recorded information in the edited version according to the present invention, *e.g.*, a video clip of a young fan watching the game, or a video clip of a coach or manager giving

signals or changing the pitcher, so as to accent the summary presentation provided by this invention. Thus, the use of such words as “essentially” and “substantially,” which the Federal Circuit has repeatedly acknowledged are terms implying approximation not exactness, to modify certain aspects of the claimed method, prevents one from slavishly limiting the literal scope of the method to the essential actions. The objective of the invention is to present a complete summary of the action that is recorded in the original game, as reflected in the box score for each participant in the game, so that the action is consolidated into about 10-15 minutes of video.

The Examiner argues (second paragraph on page 3 of the Final Office Action) that “no criticality is seen in the duration of the edited recording”. The examiner ignores that the nature of the invention is to condense the essential action of an entire baseball game into the described period of time. The examiner has cited no prior art which suggests the method claimed by the applicant in the present case. The examiner has also erroneously concluded that showing highlights of a game is equivalent to showing essentially the entire game in a condensed format.

Indeed, if the claimed method was simply an obvious design choice, why then did Major League Baseball call it “revolutionary” when it first introduced its offering of “Condensed Games.” “Major League Baseball (MLB) today announced the debut of a revolutionary new baseball video service.” (Press Release of March 5, 2002 – copy submitted with August 27, 2003 Information Disclosure Statement – Evidence Tab 1). MLB’s own glowing characterization of this method of doing business (coupled with the fact that it was the inventors who previously disclosed this invention to Major League Baseball - Rule 131 declaration by the inventors (submitted February 14, 2004 – Evidence Tab 2) in which the inventors swore behind a Major

League Baseball (MLB) Press Release dated March 27, 2001 – Evidence Tab 3) stands as a powerful testament of the non-obviousness of the claimed method. This objective indication of the non-obviousness of the method must be considered when evaluating the patentability of the claimed method. The adoption by MLB of this business method (see also MLB's web page from May 2002 using the term "pay-off pitch" to describe the product available for \$4.95/month – Evidence Item 4) decades after pre-recording of baseball games was begun and years after the technology of providing such a product/service over the internet was available, stands as an uncontested tribute to the ingenuity and inventiveness of the claimed method. We submit that such third party commentary unequivocally demonstrates the patentability of the subject matter defined by the pending claims.

This evidence has not been properly considered. In the previous Final Office Action (Office Action of June 28, 2005), the Examiner ignored this secondary evidence of non-obviousness by stating (paragraph bridging pages 9 and 10)

"With regard to the statement that 'even the MLB' declares that this is a revolutionary new process: use of hyperbole is well-known in the advertising art. The mere comment made an advertising promotion does not inherently create a factual statement."

We submit that whether an advertising statement (such as one made by the MLB) is hyperbole or not is irrelevant. In any case, the Examiner is in no position to make such conclusion and cites no support for that position. What is relevant and undeniable is the fact that MLB promoted and used the method of the present invention and that use is an indicator of



“commercial success” appropriately taken into account as a secondary factor of non-obviousness under the standards of Graham v. John Deere Co., 383 U.S. 1, 13-14 (1966).

As the Court of Appeals for the Federal Circuit has succinctly stated:

*... the rule is that the burden of persuasion is on the PTO to show why the application is not entitled to a patent. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed.Cir. 1992) (Plager, J., Concurring); In re Warner, 54 C.C.P.A. 1628, 379 F.2<sup>nd</sup> 1011, 1016, 154 USPQ 173, 177 (CCPA 1967), cert denied, 389 U.S. 1057, 19 L. Ed. 2d 857, 88 S. Ct. 811 (1968); see also In re Caveney, 761 F.2d 671, 674, 226 USPQ 1, 3 (Fed.Cir. 1985) (“Preponderance of the evidence is the standard that must be met by the PTO in making rejections.”) In re Epstein, 32 F.3d 1559 (Fed.Cir. 08/17/1994)*

As a final matter, the citation of the secondary reference MediaChannel does not address any of the glaring shortcomings of the primary reference. While MediaChannel provides video clips for sale nothing regarding a baseball-related product of the type embraced by the pending claims is mentioned. The dependent claims embraced within the rejection that relies on the MediaChannel reference in combination with ProQuest are patentable for the same reasons advanced above in connection with the rejections based on ProQuest alone.

As set forth above, the examiner has not provided any prior art sufficient to meet this burden. Accordingly, the applicants herein are entitled to have a patent granted.

## CONCLUSION

For the reasons given above, the rejection of the pending claims is improper. The Board of Patent Appeals and Interferences should reverse the rejection.

Respectfully submitted,

/Joseph M. Skerpon/

Date: April 1, 2008

By: \_\_\_\_\_  
Joseph M. Skerpon  
Registration No. 29,864

Customer No. 22907

## **APPENDIX 1. APPEALED CLAIMS**

Claim 23. A method of replaying or rebroadcasting a baseball game for which a video recording of the baseball game was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) obtaining subscribers for viewing the edited recording and (c) playing or broadcasting the edited recording for viewing by the subscribers.

Claim 24. A method of providing a subscription for viewing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording by deleting substantially all game action other than (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) obtaining subscribers for viewing the edited recording and (4) playing or broadcasting the edited recording as a condensed recorded game for viewing by the subscribers.

Claim 25. The method of claim 23 wherein the edited recording for a nine-inning baseball

game is about 15 minutes.

Claim 26. The method of claim 23 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 27. The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 28. The method of claim 23 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 29. The method of claim 23 wherein the edited recording contains audio explaining any substitution of players.

Claim 30. The method of claim 24 wherein the edited recording for a nine-inning baseball game is about 15 minutes.

Claim 31. The method of claim 24 wherein said edited recording comprises only a portion of a nine-inning baseball game.

Claim 32. The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 33. The method of claim 24 wherein said step of playing or broadcasting the edited recording for viewing is conducted by playing a videotape recording.

Claim 34. The method of claim 24 wherein the edited recording contains audio explaining any substitution of players.

Claim 35. A method of obtaining revenue by replaying or rebroadcasting a condensed baseball game, for which a video recording of the baseball game was produced containing substantially every pitch thrown to every batter from a first pitch to a final pitch and game action resulting from every pitch, together with other action occurring during each appearance by every batter, the method comprising (a) editing the video recording to produce an edited recording, the edited recording having video consisting essentially of (i) the final pitch thrown to every batter and any game action resulting from the final pitch, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (b) offering the edited recording to potential subscribers for viewing and (c) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 36. The method of claim 35 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 37. The method of claim 35 wherein the edited recording contains audio explaining any substitution of players.

Claim 38. A method of obtaining revenue from editing a recorded baseball game in which players from each team appear at bat, and attempt to place a pitched baseball into play and to

reach base safely; with players failing to reach base safely being out and players on base attempting unsuccessfully to advance to another base being out; the method comprising: (1) recording each appearance-at-bat for every player and game action resulting from an appearance-at-bat to produce a game recording; (2) editing the game recording of each appearance-at-bat to produce an edited recording which consists essentially of (i) game action from a final pitch thrown to each player, (ii) successful attempts of runners on base to advance to another base not associated with the game action resulting from the final pitch and (iii) unsuccessful attempts of the runners on base to advance to another base resulting in an out not associated with the game action resulting from the final pitch; (3) offering the edited recording to potential subscribers for viewing and (4) playing or broadcasting the edited recording for viewing by the subscribers for monetary consideration.

Claim 39. The method of claim 38 wherein said step of playing or broadcasting the edited recording for viewing is conducted over the Internet.

Claim 40. The method of claim 38 wherein the edited recording contains audio explaining any substitution of players.

## **APPENDIX 2. EVIDENCE RELIED UPON**

1. MLB Press Release of March 5, 2002 – submitted with August 27, 2003 Information Disclosure Statement, Cite No. AB – see also Evidence Item 4) – initialed as considered by Examiner's on February 18, 2004 and April 6, 2004.
2. Rule 131 Declaration and documents referred to therein (submitted with Amendment filed February 18, 2004) and including August 27, 2003 Information Disclosure Statement - PTO/SB/08A with references cited by applicant and considered by Examiner
3. .March 27, 2001 MLB Press Release
4. MLB's web page from May 2002 – submitted with Amendment filed January 25, 2006..

### **APPENDIX 3. RELATED PROCEEDINGS**

There are no related proceedings.



Tab 1



Scoreboard Teams/Players News Stats Schedule Standings Tickets Fantasy Auction Shop SimLe  
Audio Video Transactions Injuries Minor Leagues History Kids Fan Forum Events Spring Training



3/5/2002 10:30 am ET

## MLB Advanced Media adds new "star" to video lineup in 2002

Revolutionary condensed game video joins popular returning starters from last season

MLB Advanced Media press release

- Watch the Condensed Game demo: three innings of Game 3 of the 2001 World Series

NEW YORK, NY, March 5, 2002 – MLB Advanced Media, LP (MLBAM), the interactive media and Internet company of Major League Baseball (MLB), today announced the debut of a revolutionary new baseball video service to its starting lineup for the 2002 season, *MLB.com Condensed Games*.

*MLB.com Condensed Games* ("Not Just Baseball, Fastball!") joins a host of exclusive audio and video services that made their debut last season. Fans will be able to watch every hit, run & out in a game (about 85 pitches) resulting in an action-packed 300x video stream of a complete ballgame that runs approximately 20 minutes. Condensed Games will be available to fans about 90 minutes after the completion of every game. MLB.com's multimedia content is played exclusively through RealNetwork's RealOne player and will be demonstrated at a press conference hosted by Real Networks to introduce The Gold Release of RealOne in Los Angeles later today.

"We are very pleased to continue to break new ground in the development of exclusive audio and video services," said Bob Bowman, CEO of MLBAM. "While the best ways to watch a ballgame continue to be at the ballpark or on television, *MLB.com Condensed Games* offers geographically or time-displaced fans an alternate way to enjoy baseball."

Today's announcement represents the creation of another first-of-its-kind baseball subscription service from MLBAM. *Condensed Games* joins a number of returning starters to MLB.com's subscription service lineup. The official website of MLB now offers a number of exclusive audio and video services which made their debut last season, including *MLB.com Gameday Audio* – live & archived audio webcasts of all MLB games both home and away (and foreign language feeds when available); *MLB.com Custom Cuts* – a customizable, on-demand, video highlight service, enabling fans to create their own highlight reels of their favorite players; and *Baseball's Best*, a growing library of broadband video of the greatest games in baseball history soon to be expanded with original radio calls of classic games from the 1930's through the present.

The price of the new *Condensed Game* service will be announced shortly. A demo of the new service will be available on the MLB.com site following the conclusion of the Real Networks press conference in Los Angeles later today.

[http://mlb.mlb.com/NASApp/mlb/mlb/homepage/mlb\\_homepage.jsp](http://mlb.mlb.com/NASApp/mlb/mlb/homepage/mlb_homepage.jsp)



TRI

THE OFFICIAL SITE OF MAJOR LEAGUE BASEBALL

Q & A with Royals owner David Glass  
White Sox working to end baserunning blunders  
Mets' Chen going the extra mile  
Adrian Brown eager to take center stage  
Lieberthal happy to be back in action  
Saturday's Cactus League results  
Saturday's Grapefruit League results  
Four suspended, three fined from Angels, Padres  
Pokey and Junior dissolve controversy  
Henderson, El Duque have words

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MLB Press Releases >>

MLB.com Press Releases >>

Kip Wells: Spring Training diary

Mark Redman: Spring Training diary

Schlegel: Nine more questions for spring  
Carlos' Comer: It's good to clear your head

Molony: McClendon brings in The Cobra  
Carlos' Comer: You have to have a short memory

In his own words: Jon Lieber

Reggie Sanders: This Giants team is awesome

Vina: Good to get back out there

Molony: Astros trying to solve 3B problem

Select a team

3/17/02

# Tab 2

**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application Of:	)	Confirmation No. 8653
George Michael MOCKRY et al.	)	Group Art Unit: 3711
	)	Examiner: M. Chambers
Serial No.: 09/878,860	)	Customer No. 22907
	)	Attorney Docket No.: 006385.00001
Filed: May 10, 2002	)	

**For: METHOD OF RECORDING AND PLAYING BASEBALL GAME  
SHOWING EACH BATTER'S LAST PITCH**

**DECLARATION OF GEORGE AND GREG MOCKRY  
PURSUANT TO 37 C.F.R. §1.131**

The Honorable Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

WE, GEORGE AND GREG MOCKRY, hereby declare that:

1. We are both citizens of the United States of America, respectively residing in Cotez, CO and Massena, NY.
2. We are co-inventors of the subject application.
3. We jointly made this invention in the United States as of June 13, 2000 and before the earliest public announcement of Major League Baseball for its Condensed Games service, which we believe to have been the March 27, 2001 Press Release (cite AA in our most recently filed PTO-1449).
4. We jointly conceived of the invention in the United States before June 13, 2000.
5. We constructively reduced this invention to practice in the United States by filing Provisional Patent Application No. 60/211,208 in the United States patent and Trademark Office on June 13, 2000, a certified copy of this

C

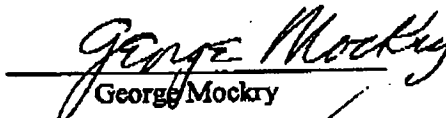
Serial No. 09/878,860

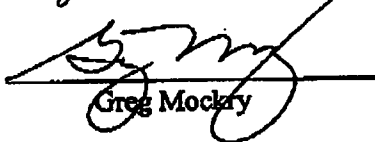
Attorney Docket No.: 006385.00001

Provisional Application having previously been filed in connection with the prosecution of the subject application and another copy thereof being attached to this declaration at Tab A.

6. We disclosed this invention to a representative of Major League Baseball on August 1, 2000 (cite AE in our most recently filed PTO-1449).
7. We declare further that all statements made herein are of our own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: 2-13-04Dated: 2-11-04

  
George Mockry

  
Greg Mockry

C

# **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING EACH BATTER'S LAST PITCH**

Inventors: Greg M. Mockry and George Mockry

This invention relates to a method of condensing the action portions of a baseball game or other sporting event, by recording the game on film or video tape, and editing it to retain the action portions, i.e., the last pitch thrown to the batters for each turn at the plate.

There are nine players in the field, i.e., on defense, at positions of catcher, pitcher, first base, second base, shortstop, third base, left field, center field and right field. The batting, or offensive, team bats one player at a time, in turn. Each team's half-inning ends when the three outs have been recorded. An out can occur for a given batter only when the batter has struck out or batted the ball into play, although a batter can remain at the plate if a base runner is tagged out, i.e., in a pick-off or if caught stealing. The player can only advance legally to first and be a base runner as a result of the last pitch thrown to him in a given turn at the plate, i.e., he can hit safely, be awarded a base on balls, be struck by a pitch, or strike out and reach first safely after a dropped or passed third strike. Any runners on base advance under these circumstances or are tagged or forced out. There are other ways a base runner can advance before a batter's turn comes to an end, for example, by stealing base, or on account of a wild pitch or a balk.

During a baseball game, there is considerable time taken during each half-inning in which there is only limited action on the field. For example, for a given player's turn at bat, there can be six or more pitches thrown before the player hits the ball into play, strikes out, or walks. In addition, there is often a great deal of time used in pick off attempts and conferences in the infield, and in changing places between half-innings. A nine-inning game can typically last between two and three hours, and sometimes longer.

In accordance with an aspect of this invention, a film or video record is made of each player's turn at bat. The video record, which can be film, digital, or tape, is edited down to retain the last pitch thrown to each player, plus any resulting action for that pitch. This would record each safe base hit, each walk, strike out, sacrifice fly, ground out, etc. Of course, fielding would be recorded, i.e., each put-out, error, double-play, and throw-out. The resulting video record would be about 10 to 15 minutes, showing all the action of the game. Base running activity (i.e.,

activity that can also result in either an out or advancement of the runner) can also be retained, such as stolen bases and attempted steals, pickoffs, rundowns, balks, and wild pitches. Some additional material (e.g., narrative) can be included to explain pitching changes, pinch runners, and other substitutions that may affect play.

The completed (edited) version can be sold on a per-game basis, i.e., through a cable subscription arrangement, or delivered digitally over the Internet to subscribers, perhaps using a password and PIN assigned to the subscriber. The 10 to 15 minute video can also be used by professional scouts and others for purposes of player evaluation. The editing could take place immediately after each play, so that the recorded video could be released to its viewership immediately after the game. Each inning or half-inning can be packaged as a unit, if desired. This could increase interest in baseball, by making the game available, on a near-real-time basis, to fans some distance from the ball park, i.e., 75 miles or more. This could also permit satellite viewing of the game at remote locations, without requiring the full bandwidth that is needed for an unedited version or live telecast.

This procedure and the resulting action video can be used for other sports as well. In track and field, the last attempt or heat of each event could be recorded, e.g., the last pole-vault attempt for each athlete competing, and the last twenty meters of each race or heat. The invention would likewise apply in swimming and diving, or in figure skating. In horse racing, the final stretch and finish of each race would be recorded. This invention could also be adapted to baseball-related sports such as fast-pitch softball and cricket. The invention can be applied to net sports, e.g., capturing all game points in a tennis match, and capturing each score in volleyball. This system can also be adapted to show the important action in goal sports such as hockey, lacrosse, basketball, soccer, rugby, and football. The invention can also be used to feature target sports, i.e., to follow all the shots of a given player in golf or in billiards, or every roll in bowling.

185 Cook Rd.  
Massena, NY 13662  
(315) 764-1101 (H)  
(315) 764-0201 (O)  
(315) 764-0162 Fax (O)  
gmockry@metlife.com

August 1, 2000

Mr. Ethan Orlinski  
General Counsel  
245 Park Avenue, 31<sup>st</sup> Floor  
New York, NY 10167

RE: *Baseball Quick*

Dear Mr. Orlinski:

My father and I have developed "*Baseball Quick*" as an exciting new way of packaging the excitement of a baseball game. We would like you to consider this as a way to stimulate public interest in Major League Baseball. We have filed a United States Patent application for *Baseball Quick*. If you are interested, we would like to offer *Baseball Quick* to Major League Baseball under reasonable terms. On the other hand, if you are not interested in doing this yourself, we would like to obtain permission to use videos of Major League games to produce *Baseball Quick* ourselves or through a third party.

*Baseball Quick* is a method of condensing the action portions of a baseball game or other sporting event, by recording the game on film or video tape and editing it to retain the action portions, i.e., the last pitch thrown to the batters for each turn at the plate. During any baseball game, for a considerable part of each half inning there is only limited action on the field. For example, in any given turn at bat, there can be six or more pitches thrown before the batter puts the ball into play, strikes out, or walks. In addition, there is often a great deal of time used in pick off attempts and conferences in the infield, and in changing places between half-innings. A nine-inning game can last between two to three hours, and sometimes longer.

What *Baseball Quick* does is to make a film or video record of each player's turn at bat. This is edited down to retain the last pitch thrown to each player, plus any resulting action for that pitch. *Baseball Quick* would keep each safe base hit, each walk, strike out, sacrifice fly, ground out, etc. Fielding would be recorded, i.e., each put-out, error, double-play, and throw-out. We would also keep in stolen bases and attempted steals, pickoffs, rundowns, balks, and wild pitches. Some additional material (e.g., narrative) can be included to explain pitching changes, pinch runners, and substitutions that may affect play. The resulting video record would be about 10 to 15 minutes, showing all the action of the game.

The completed (edited) version can be sold on a per-game basis: for example, one team package for \$35.00; three team package for \$60.00; all teams for \$90.00. *Baseball Quick*



can be sold as a video cassette to fans, through a cable subscription arrangement, or delivered digitally over the Internet to subscribers, perhaps using a password and PIN assigned to the subscriber. The editing could take place immediately after each play, so that the recorded video could be released to its viewership immediately after the game, subsequent times at night, and early morning, to afford everyone's daily schedule to see every game. Each inning or half inning can be packaged as a unit, if desired. *Baseball Quick* will increase interest in baseball by making the game available, on a near-real-time basis, to fans some distance from the ball park, i.e., 75 miles or more. This could also permit satellite viewing of the game at remote locations (i.e., on-line) without requiring the full bandwidth that is needed for an edited version or live telecast. Many baseball fans do not have two to three hours to devote to watch a complete game, they have 10 to 15 minutes and would love to see their favorite team's every game.

There are many other features and advantages to *Baseball Quick*, and we would be happy to discuss these with you. For example: go back and edit some or all of the World Series games and sell as a package; or, live microphone installed at home plate to hear crack of the bat. For your information, a letter identical to this has also been sent to Allan Selig, Commissioner of Baseball. Letters have also been sent to each of the 30 Major League Baseball teams.

Sincerely,



Greg M. Mockry

GM/ap  
Enclosures

cc: Barney Molldrem  
Trapani & Molldrem, Attorneys at Law  
2<sup>nd</sup> Floor, Monroe Building  
333 East Onondaga Street  
Syracuse, NY 13202  
(315) 422-4323  
(315) 422-4318 Fax

cc: George Mockry  
32 Piper Road  
Sheridan, WY 82801  
(307) 674-4256

PTO/SB/08A (10-01)

Approved for use through 10/31/2002. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449A/PTO		<b>Complete if Known</b>	
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>  (use as many sheets as necessary)		Application Number	09/878,860
		Filing Date	May, 10, 2002
		First Named Inventor	MOCKRY et al.
		Group Art Unit	3711
		Examiner Name	M. Chambers
		Attorney Docket Number	006385.00001
Sheet	1	of	1

U.S. PATENT DOCUMENTS					
Examiner Initials *	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number - Kind Code <sup>2</sup> (if known)			
		US-			
		US-			
		US-			

FOREIGN PATENT DOCUMENTS						
Examiner Initials *	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>4</sup>
		Country Code <sup>3</sup> - Number <sup>2</sup> - Kind Code <sup>3</sup> (if known)				

OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS			
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WA	AA	Press Release Major League Baseball, 3-27-2001 ( <a href="http://pressbox.mlb.com/NASApp/mlb/pressbox/news/pressbox_news_story.jsp?article_id+...">http://pressbox.mlb.com/NASApp/mlb/pressbox/news/pressbox_news_story.jsp?article_id+...</a> )	
WA	AB	Press Release Major League Baseball 3-5-2002 ( <a href="http://mlb.mlb.com/NASApp/mlb/mlb/homepage/mlb_homepage.jsp">http://mlb.mlb.com/NASApp/mlb/mlb/homepage/mlb_homepage.jsp</a> )	
WA	AC	Press Release Major League Baseball, 4-1-2003 ( <a href="http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_com_press_release.jsp?ymd=20030401&amp;...">http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_com_press_release.jsp?ymd=20030401&amp;...</a> )	
WA	AD	Dave Boling, April 11, 2002, "Baseball for the Short Attention Span" ( <a href="http://www.tcpalm.com/tcp/baseball/article/0,1651,TCP_1057_1082008,00.htm">http://www.tcpalm.com/tcp/baseball/article/0,1651,TCP_1057_1082008,00.htm</a> )	
WA	AE	Letter dated August 1, 2000 from Greg M. Mockry to Ethan Orlinsky	

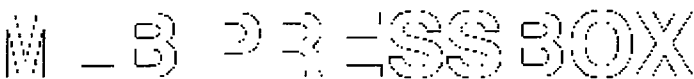
Examiner Signature		Date Considered	2.18.04	4/6/04
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<sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04.<sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language Translation is attached.

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Tab 3



CLUBS	HEADSHOTS	STATISTICS	GAME N
EVENTS	PRESS RELEASES	MEDIA ANNOUNCEMEN	
MLB	EXECUTIVES	HISTORY/INFO	MEDIA GUIDES



3/27/2001 11:13 am ET

Press Release

&lt;&lt; Return

## MLB Advanced Media and RealNetworks announce exclusive, three-year agreement

**RealNetworks secures distribution and format rights for Major League Baseball**

**Companies to offer new, subscription-only access to MLB content, including audio webcasts of all games with synchronized statistics and searchable video highlights**

RealNetworks®, Inc. (Nasdaq: RNWK), the global leader in Internet media delivery, and MLB Advanced Media, LP (MLBAM), the interactive media and Internet company of Major League Baseball (MLB), today announced a three year agreement to make RealNetworks the exclusive platform for a broad range of MLBAM's online services, including live audio webcasts of all MLB games, and a customizable, on—demand, archival, video highlight service.

According to the two companies, the groundbreaking agreement represents the largest Internet deal in the history of professional sports, and is intended to make subscription services a central part of their efforts to improve the way fans listen to and watch Major League Baseball over the Internet. This audio and video offering marks the first time so rich an array of multimedia interactive baseball programming has ever been made available on any medium.

Audio webcasts for all regular season MLB games will be available by subscription only through MLB.com and Real.com. The audio webcasts will be enhanced with MLBAM's synchronized game statistics and pitch—by—pitch animation.

In addition, RealNetworks and MLBAM plan to offer subscribers the ability to search for and create customizable video highlights of daily game coverage — providing a flexible way for baseball fans and fantasy—league enthusiasts to compile and review footage of their favorite teams and players on a daily basis. By providing archival access to every pitch from every game, this personalized video service will let individual subscribers choose the exact game highlights they want to watch. It will be available from MLB.com and Real.com, through RealPlayer® GoldPass®, the premium Internet subscription service launched by RealNetworks last August.

Under the agreement, all multimedia Internet content offerings from MLB will be provided exclusively in RealNetworks' formats.

"RealNetworks' partnership with Major League Baseball and MLBAM — offering full game audio, synchronized statistics, customizable video and condensed game playback content — will provide baseball fans worldwide with a resource for online entertainment that is second to none," said Rob Glaser, Chairman and CEO, RealNetworks, Inc. "Like the cable television industry did so effectively in the 1970s, RealNetworks is now opening up the Internet as the next mass medium for distributing great sports content. We are methodically building a critical mass of top-tier, web-based sports content — and proving that subscription models on the Internet can and will be successful."

"We are thrilled to be working with RealNetworks to deliver the excitement of MLB action to web fans worldwide," said Bob Bowman, president and CEO of MLBAM. "We hope that MLB.com and RealNetworks will set the precedent for the future of online sports entertainment."

The audio offering will be available to subscribers starting in April of this year. The video highlights are scheduled to be available in May. Additional audio and video—based products and services will also be added in months to come.

Today's agreement supports MLBAM's goal of providing fans the richest, deepest, broadest and most timely baseball content on the Internet. Visitors to the MLB.com site are offered the most accurate and comprehensive baseball news, statistics, history, fantasy, live radio and searchable video, as well as the best in e—commerce. As a result of this agreement, fans will gain unprecedented access to over 4,000 game feeds, including home and away games and foreign language coverage.

The RealPlayer GoldPass service provides web users with access to an exclusive mix of content, premium services, and software. It has quickly emerged as one of the fastest growing subscription services on the Internet, amassing an active subscriber base of more than 175,000 members in only seven months. In January of this year, the Company expanded GoldPass' exclusive sports offerings with an agreement to provide audio coverage for all National Basketball Association games as well as webcasts of NBA.com TV.



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# Tab 4

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## Video

- DAILY VIDEO
- CONDENSED GAMES
- Info & Sign Up
- Archive
- HIGHLIGHTS DIRECT
- CUSTOM CUTS
- BASEBALL'S BEST

MLB.com Video is available in 56K or 300K, but best experienced with a high-speed DSL, cable modem or other broadband connection.

All MLB.com media plays in the FREE RealOne player! Download RealOne FREE



Not just baseball ... *fastball!*  
Watch every payoff pitch in about 20 minutes.

**SIGN UP NOW!**

- See every hit, run & out – about 85 pitches – in an action-packed 300K video stream.
- Up to 35 games per week available a few hours after the last pitch, linked from the Daily Video page.
- Sign up now for only \$4.95/month. Subscription begins May 1st.

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Don't miss a thing  
get it all v  
MLB.com  
**TOTAL TICKET**  
and enjoy ac  
**GAMEDAY**  
**CONDENSED**  
**PRESS**  
**BASEBALL**  
**HIGHLIGHTS**  
TELL ME MORE

Not sure? Watch a sample Condensed Game... here, the Yankees and Red Sox do battle at on April 15th.

To launch the game, click on the screen shot below. To see the living linescore, you must have RealOne player... download it here now, for free. (Real8 users will only be able to watch the vic

RealOne Player

Apr 15: Yankees @ Red Sox - MLB.com

7:44 / 15:15

**MLB.com CONDENSED GAMES**

	1	2	3	4	5	6	7	8	9	R	H	E
NY Yankees	0	0	0	1						1	1	1
Boston	2	0	0	0						2	7	0

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